UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

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| LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC), et al. | ) | |
| v. | ) | No. 3:04-0613 |
| | ) | JUDGE CAMPBELL |
| PHIL BREDESEN, et al. | ) | |

MEMORANDUM

I. Introduction

Pending before the Court is Plaintiffs' Motion For Preliminary Injunction (Docket No. 4). The Court held a hearing on the Motion on September 23, 2004. For the reasons set forth below, the Motion is DENIED.

II. Factual and Procedural Background

Plaintiffs Yoland Lewis, Geraldine M. Gurdian, and Alex M. Siguenza, filed a Class Action Complaint (Docket No. 1), and subsequently a First Amended Class Action Complaint (Docket No. 6), in this action against Phil Bredesen, Governor of the State of Tennessee, Fred Phillips, Commissioner of the Tennessee Department of Safety, and Nancy Murray and Michael Allen, employees of the Tennessee Department of Safety. Plaintiffs challenge enforcement of Public Chapters 351 and 778 on various grounds, and allege that Defendants unconstitutionally seized certain property of Plaintiff Gurdian.

Public Chapter 778, which was enacted in 2004, amended Title 55 of the Tennessee Code to provide that drivers' licenses could be issued only to United States citizens or to lawful permanent residents. Tenn. Code Ann. § 55-50-321(c)(1)(C). "Persons whose presence in the

United States has been authorized by the federal government for specific purpose and for specified period of authorized stay" are eligible to obtain a certificate for driving, valid for a period of one to five years. Tenn. Code Ann. § 55-50-331(g). Those who do not fit within any of the three categories set forth above may also obtain a driving certificate that is valid for a period of one year. Tenn. Code Ann. § 55-50-331(h). The driving certificate "shall clearly display on its face a phrase substantially similar to 'FOR DRIVING PURPOSES ONLY - NOT VALID FOR IDENTIFICATION.'" Tenn. Code Ann. § 55-50-102(6).

The relief requested by the Plaintiffs, as articulated at the hearing, is a preliminary injunction prohibiting enforcement of the drivers' certificate legislation, which would result in invalidation of all driving certificates that have been issued, and requiring the State to permit those holding drivers' certificates to apply for a drivers' license under the law as it existed prior to the enactment of the drivers' certificate legislation.

## III. Analysis

### A. Standards Governing Issuance of Preliminary Injunctions

In determining whether to issue a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure, the Court is to consider: (1) whether the movant has shown a strong or substantial likelihood of success on the merits; (2) whether irreparable harm will result without an injunction; (3) whether issuance of an injunction will result in substantial harm to others; and (4) whether the public interest is advanced by the injunction. Michigan State AFL-CIO v. Miller, 103 F.3d 1240, 1249 (6th Cir. 1997).

B. Likelihood of Success on the Merits

1. Standing

Defendants contend that Plaintiff LULAC lacks standing to bring this action.

The Sixth Circuit recently pointed out that a voluntary membership organization has standing to sue on behalf of its members "'when (a) its members otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires participation of individual members in the lawsuit.'" American Civil Liberties Union of Ohio Foundation, Inc. v. Ashbrook, 375 F.3d 484, 489 (6th Cir. 2004)(quoting Hunt v. Washington State Apple Adver. Comm., 432 U.S. 333, 343, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977)); Adland v. Russ, 307 F.3d 471, 478 (6th Cir. 2002).

The First Amended Complaint (Docket No. 6) states in Paragraph 6 that LULAC is "the largest and oldest Hispanic organization in the U.S. . . . dedicated to advance the economic condition, educational attainment, political influence, health and civil rights of the Hispanic population of the United States." The Plaintiffs further allege that "LULAC has over 115,000 members throughout the United States, including members who are not U.S. citizens residing in the United States, one or more of whom would have standing to bring this action in their own right." (Id.)

Defendants' brief does not address the organizational standing requirements set forth above.

As for the first requirement, Plaintiff LULAC has alleged that certain of its members are United States citizens and would have standing to sue in their own right. The Court is also

satisfied that certain of LULAC's membership would be affected by the citizenship/lawful permanent resident alien requirement for obtaining a drivers' license. As to the second standing requirement, the Complaint sufficiently alleges that the interests LULAC seeks to protect in this lawsuit are germane to the organization's purpose. The ability of Hispanic aliens, like other aliens, to obtain drivers' licenses could be affected by the drivers' license legislation. Finally, the Court is persuaded that participation of individual members, in addition to the individual Plaintiffs already named, is not necessary to resolution of Plaintiffs' claims.

Accordingly, the Court is not persuaded by Defendants' standing argument.

2. Standing and immigration status

Next, Defendants argue that illegal aliens are the only class of individuals who have standing to challenge the drivers' license legislation. Defendants argue that United States citizens and lawful permanent resident aliens are not harmed by the new statute because they are still able to obtain drivers' licenses. Defendants argue that lawful aliens who have not been granted permanent resident status are not harmed by the inability to obtain a drivers' license because they may still obtain a driving certificate, and do not need a drivers' license for identification because they can use their immigration documents for identification.

Standing to sue requires an individual to demonstrate (1) actual or threatened injury which is (2) fairly traceable to the challenged action and (3) a substantial likelihood the relief requested will redress or prevent the plaintiff's injury. Ashbrook, 375 F.3d at 488-489.

Plaintiffs have alleged that it is more difficult to conduct certain business or engage in certain activities without use of a drivers' license as identification. That allegation of injury is

sufficient to confer standing for purposes of this Motion, although as set forth below, the Court is not persuaded that the injury rises to the level of a constitutional violation.

3. Equal Protection/Due Process

Plaintiffs allege that by prohibiting illegal aliens and those aliens who have not been granted permanent resident status from obtaining a drivers' license, the drivers' license legislation creates an unconstitutional classification under the Equal Protection Clause based on alienage or national origin. Plaintiffs also argue that the drivers' license legislation creates an irrebuttable presumption that illegal aliens and those aliens who have not been granted permanent resident status are a threat to homeland security.

The Equal Protection Clause requires that "all persons similarly circumstanced shall be treated alike." Plyler v. Doe, 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982).[1] A statutory classification that does not burden a suspect class or infringe upon the exercise of a fundamental right must be upheld against equal protection challenge "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." Federal Communications Commission v. Beach Communications, Inc., 508 U.S. 307, 113 S.Ct. 2096, 2101, 124 L.Ed.2d 211 (1993). Strict scrutiny applies where the classification burdens a suspect class or fundamental right. Id.; City of Cleburne, Texas v. Cleburne Living Center, Inc., 473 U.S. 432, 105 S.Ct. 3249, 3254, 87 L.Ed.2d 313 (1985).

This case is not about "citizens" versus "aliens." Plaintiffs argue that classifications based on alienage are inherently suspect. But, the statute at issue does not classify persons based

[1] The Supreme Court has held that aliens are "persons" for purposes of the Due Process and Equal Protections Clauses of the Constitution. Plyler, 102 S.Ct. at 2394.

on alienage. The statutory classification in this case is between citizens and lawful permanent resident *aliens* on the one hand, and illegal *aliens* and those *aliens* who are not permanent lawful residents, on the other hand. Thus, the classification created by the drivers' license legislation is not between aliens and citizens. The drivers' license law does not distinguish among persons because of a protected classification. For instance, aliens can qualify for either a drivers' license or a drivers' certificate based on legitimate criteria other than alienage. Instead, the classification is based on the legality of the alien's presence in the country under federal law (lawful permanent resident aliens vs. illegal aliens) and/or the length of time the federal government has authorized the alien to stay in this country (permanent vs. temporary).[2] Thus, the Court is not persuaded that the legislation burdens a suspect class, and should be subjected to strict scrutiny analysis.

Illegal aliens, moreover, are not a "suspect class" under the Constitution. Plaintiffs argue that strict scrutiny analysis, or at the very least, intermediate scrutiny analysis, is required by the Supreme Court's decision in Plyler v. Doe, supra. In Plyler, the Court held that a Texas statute that denied a free public education to the children of illegal immigrants violated the Equal

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[2] The distinction between the subgroups here is not a suspect classification. See, e.g., Doe v. Commissioner of Transitional Assistance, 437 Mass. 521, 773 N.E.2d 404, 414 (2002)(In distinguishing between subgroups of aliens, rational basis review is appropriate unless classification is based on race, gender, national origin, or other suspect classification); Soskin v. Reinertson, 353 F.3d 1242, 1255-56 (10th Cir. 2004)(Discrimination among subclasses of aliens based on non-suspect classifications, such as work history or military service, is subject to rational basis review). The distinctions here, rather, are based on non-suspect classifications such as the legality of presence and length of authorized stay. In any event, the State has shown the legislation furthers a compelling state interest by the least restrictive means. Id. As discussed below, the State has a compelling interest in balancing driver safety, on the one hand, and the deterrence/prevention of crime and terrorist activity, on the other. Drawing the classification based on legality of presence and the length of authorized stay is the least restrictive means to achieve the State's compelling interests. See infra.

Protection Clause. In reaching its decision, the Court applied what some commentators have called intermediate scrutiny based on the special circumstances of the children. The Court specifically drew a distinction, however, between the children and their parents:

> We reject the claim that 'illegal aliens' are a 'suspect class.' No case in which we have attempted to define a suspect class. . . has addressed the status of persons unlawfully in our country. Unlike most of the classifications that we have recognized as suspect, entry into this class, by virtue of entry into this country, is the product of voluntary action. Indeed, entry into the class is itself a crime. In addition, it could hardly be suggested that undocumented status is a 'constitutional irrelevancy.'

Plyer, 102 S.Ct. at 2396 n. 19. (Emphasis added). In other words, "illegal alien" is not a constitutionally suspect class.

In this case, the class affected by the drivers' license legislation consists of illegal aliens and those legal aliens who have not been granted permanent lawful resident status by the federal immigration authorities. Membership in this class is voluntary, and does not resemble the class of children described in Plyler. Therefore, the heightened scrutiny analysis that was applied in Plyler is not warranted here.[3]

Plaintiffs also argue that strict scrutiny is necessary because their right to travel is infringed by the inability to obtain a drivers' license. The Supreme Court has recognized a right to interstate travel under certain circumstances, and the Sixth Circuit has recognized a right to

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[3] Finally, Plaintiffs' argument that Nyquist v. Mauclet, 432 U.S. 1 (1977) applies is also unavailing. In Nyquist some, but not all, aliens were prohibited from obtaining state financial assistance for higher education. Here, all aliens can obtain driving privileges from the state and, thus, "aliens" as a group are not harmed. Also, Nyquist, unlike this case, did not involve illegal aliens or a classification based on the legality of the alien's presence in the United States and/or the length of stay. Finally, the state's interest in public safety was not an issue in Nyquist and the government's interest in safe highways and the prevention of terrorism is far more compelling that its interest in student loans.

*intrastate* travel under certain circumstances. Saenz v. Roe, 526 U.S. 489, 500, 119 S.Ct. 1518, 143 L.Ed.2d 689 (1999); Johnson v. City of Cincinnati, 310 F.3d 484, 496 (6th Cir. 2002). Neither of these rights are implicated by the new drivers' license legislation.

First, given their status, illegal aliens do not have a constitutional right to move freely about the country or the state. As pointed out by a Georgia district court in rejecting a constitutional challenge to a Georgia law prohibiting the issuance of drivers' licenses to illegal aliens:

> Regardless of which passage in the Constitution the right to travel emanates from, the obvious correlation to national citizenship is fatal to Plaintiff's argument that a fundamental right is at stake in his entitlement to a Georgia drivers' license. *Plaintiff's presence in this country is unlawful. In fact, it would be a federal crime for someone knowingly to transport Plaintiff within the United States. 8 U.S.C. § 1324(a)(1)(A)(ii). It is contrary to logic to argue that Plaintiff possesses a fundamental constitutional right to move freely throughout the United States, but that criminal sanctions could be imposed on a person in whose car Plaintiff was a passenger.*

John Doe No. 1 v. Georgia Dep't of Public Safety, 147 F.Supp.2d 1369, 1374 (N.D. Ga. 2001).

For similar reasons, the Court is not persuaded that aliens who have been legally admitted to this country on a temporary basis have a fundamental right to travel at will, much less a constitutional right to a license to drive a vehicle. Although their presence is legal, it is, by its very nature, restricted. In any event, the Court is not persuaded that any right to travel such a person may have is infringed by the inability to obtain a drivers' license to operate a motor vehicle. As the Georgia district court explained:

> The Circuit Courts have uniformly held that burdens on a single mode of transportation do not implicate the right to interstate travel. . . A legal resident of Georgia does not have a constitutional right to a driver's license. Regulation of the driving privilege is a quintessential example of the exercise of the police

> power of the state, and the denial of a single mode of transportation does not rise to the level of a violation of the fundamental right to interstate travel.

John Doe No. 1, 147 F.Supp.2d at 1375. See also Duncan v. Cone, 2000 WL 1828089 (6th Cir. 2000)(". . . there is no fundamental right to drive a motor vehicle. . . A burden on a single mode of transportation simply does not implicate the right to interstate travel.")

Moreover, under the amendments to the Tennessee statute, such a person is still eligible to receive a drivers' certificate, and therefore, is able to lawfully operate a motor vehicle just like those individuals who hold a drivers' license. Thus, no right to travel is infringed. Citizens and aliens, legal or illegal, may obtain official permission from the State of Tennessee to drive lawfully on its highways under the statute at issue.

To the extent Plaintiffs complain that their right to travel is affected by the inability to use a drivers' certificate as an identification acceptable to third parties, such as airlines, such a claim is not cognizable in a suit against the State of Tennessee. Issuance of a drivers' certificate, rather than a drivers' license, simply indicates to third parties that the State does not vouch for the identification of the holder. Third parties are still free to accept drivers' certificates as identification if they choose to do so. To the extent that third parties do not choose to accept the certificates as identification, Plaintiffs are free to try to pursue their alleged claims against those third parties. Simply put, Plaintiffs have not demonstrated that illegal aliens and those legal aliens who are not permanent lawful residents have a constitutional right to a State-issued identification card that is acceptable to third parties.[4]

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[4] The Court also notes that citizens and lawful permanent aliens who are unable to drive also presumably would be disadvantaged by not holding a drivers' license for identification.

Having determined that the drivers' license legislation does not burden a suspect class or fundamental right, the Court applies rational basis review. On rational basis review, a classification comes to the Court "bearing a strong presumption of validity. . . and those attacking the rationality of the legislative classification have the burden 'to negative every conceivable basis which might support it.'" Beach Communications, 113 S.Ct. at 2102 (citation omitted). Furthermore, the Court may rely on rational speculation "unsupported by evidence or empirical data" in arriving at conceived reasons for the legislation. Id.

The State of Tennessee contends that homeland security is the basis for limiting illegal aliens and temporary legal aliens to issuance of a drivers' certificate covering a shorter period of time than a drivers' license, and stating on the face of the certificate "not valid for identification." The State argues that the drivers' certificate legislation represents a balancing of interests – on the one hand, allowing holders of the drivers' certificate to validly operate motor vehicles in the state, while on the other hand, indicating to third parties that the State of Tennessee does not vouch for the identity of the person holding the drivers' certificate. See John Doe I, 147 F.Supp.2d at 1376 ("The State of Georgia has a legitimate interest in not allowing its governmental machinery to be a facilitator for the concealment of illegal aliens.")[5]

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[5] In reviewing the necessity for the issuance of new drivers' license regulations in Minnesota after the September 11, 2001 terrorist attacks on the World Trade Center in New York and the Pentagon in Washington, D.C., the Minnesota Court of Appeals explained:

> The DPS determined that the rules [requiring applicants to prove lawful presence in the United States] will 'tighten homeland security in Minnesota,' noting that some of the terrorist activity in the United States is carried out by foreign nationals and that many foreign nationals are illegally present in this country. Because even people not entitled to be in the United States can usually obtain or retain licenses, they can appear to be lawfully present and can plan

The State of Tennessee has the difficult and politically charged task of making the highways safe for driving and also making the state safe from crime and terrorism. In balancing these interests, the State has decided to issue drivers' licenses to citizens and lawful permanent resident aliens while also issuing driving certificates to illegal aliens and aliens who are not permanent lawful residents. These distinctions are rational in light of the safety interests that must be balanced and the classifications further those legitimate safety interests. The fact that the State could have made other rational decisions, for instance allowing no driving privileges at all for illegal aliens, does not make the current law irrational.

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nefarious activities without easy detection:

> The September 11th hijackers were described as initially entering the country, some through fraudulent means, establishing an identity through state-issued documents and blending into society in order to plan their attack.

According to the DPS, the new rules will close an identification loophole that has made identification fraud and identity theft possible.

The DPS has not demonstrated a particularly strong link between license regulation and the perpetration of terrorist crimes. But unarguably a critical key to the prevention and detection of crime is the ready and accurate identification of criminals. Law enforcement nationwide devotes considerable resources to identification through fingerprint, voice, and DNA analysis; blood-type matching; and comparable procedures. The new rules, aimed at fostering accurate identification of all license holders--citizens and permanent and temporary residents alike--address the problem of protecting the safety and welfare of people in Minnesota. We hold that the rules are generally tailored to address a problem of public safety; but, because of our analysis in the following section, we do not further reach the question of the substantive propriety of the rules to deal with threats of terrorism.

Jewish Community Action v. Commissioner of Public Safety, 657 N.W.2d 604, 609 (Minn. Ct. App. 2003).

Thus, the Court is persuaded that the classification created by the legislation citizens/legal permanent resident aliens and temporary/illegal aliens is a rational one.

For the reasons described above, Plaintiffs' national origin argument also is likely to fail. The classification set forth in the drivers' license legislation is not based on national origin because no particular nation is impacted more than any other nation. See Espinoza v. Farah Mfg. Co., 414 U.S. 86, 88 (1973)(National origin defined as "the country where a person was born, or, more broadly, the country from which his or her ancestors came."). See also Wilson v. Art Van Furniture, 230 F.3d 1358 (Table), 2000 WL 1434690 (6th Cir. Sept. 19, 2000).

Furthermore, the Court is not persuaded by Plaintiffs' due process argument that the drivers' license legislation creates an unconstitutional irrebuttable presumption that illegal aliens and those legal aliens who have not been granted permanent resident status are a threat to homeland security. In challenging a statute under this theory, the Plaintiffs must prove that the challenged presumption "is not rationally related to a legitimate state objective." See, e.g., Hamby v. Neel, 368 F.3d 549, 563 (6th Cir. 2004).[6]

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[6] In Weinberger v. Salfi, 422 U.S. 749, 95 S.Ct. 2457, 45 L.Ed.2d 522 (1975), the Supreme Court narrowed the "irrebuttable presumption doctrine," first recognized in Vlandis v. Kline, 412 U.S. 441, 93 S.Ct. 2230, 37 L.Ed.2d 63 (1973), and replaced its analysis with a more deferential standard of review:

> . . . [T]he question raised is not whether a statutory provision precisely filters out those, and only those, who are in the factual position which generated the congressional concern reflected in the statute. Such a rule would ban all prophylactic provisions, and would be directly contrary to our holding in Mourning [v. Family Publications Service, Inc., 411 U.S. 356, 93 S.Ct. 1652, 36 L.Ed.2d 318 (1973)]. Nor is the question whether the provision filters out a substantial part of the class which caused congressional concern, or whether it filters out more members of the class than nonmembers. *The question is whether Congress, its concern having been reasonably aroused by the possibility of an*

As explained above, the classification created by the drivers' license legislation satisfies this test. Accordingly, the Court is not persuaded that Plaintiffs' "irrebuttable presumption" due process claim has merit.

4. Preemption

Plaintiffs also contend that the drivers' license legislation is preempted because the regulation of immigration is the exclusive province of the federal government.

The Court is not persuaded that the drivers' license legislation is preempted by the federal government's constitutional authority to regulate immigration. The Supreme Court has held that a state statute that "mirrors federal objectives and furthers a legitimate state goal" is not preempted by the federal government's authority to regulate immigration. Plyler, 102 S.Ct. at 2399. In DeCanas v. Bica, 424 U.S. 351, 96 S.Ct. 933, 936, 47 L.Ed.2d 43 (1976), the Court explained:

> Power to regulate immigration is unquestionably exclusively a federal power. . . . But the Court has never held that every state enactment which in any way deals with aliens is a regulation of immigration and thus per se pre-empted by this constitutional power, whether latent or exercised. . .

The drivers' license legislation challenged here mirrors federal objectives by limiting the receipt of drivers' licenses to citizens and those aliens who are lawful permanent residents, and

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> *abuse which it legitimately desired to avoid, could rationally have concluded both that a particular limitation or qualification would protect against its occurrence, and that the expense and other difficulties of individual determinations justified the inherent imprecision of a prophylactic rule.* We conclude that the duration-of-relationship test meets this constitutional standard.

95 S.Ct. at 2472-73. See also Black v. Snow, 272 F.Supp.2d 21, 28-31 (D.D.C. 2003)(Noting that irrebutable presumption analysis has "simply collapsed into the ordinary equal protection/due process analysis. . .").

by offering drivers' certificates (not to be used for identification) to those who are here illegally, or who are only authorized to reside here on a temporary basis. The legislation is not an attempt to regulate immigration – "which is essentially a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain." DeCanas, 96 S.Ct. at 936. It merely relies on federal immigration standards in determining whether a person is eligible for a drivers' license or a drivers' certificate. Plaintiffs have not shown that the legislation conflicts with any existing federal law. See Equal Access Education v. Merten, 305 F.Supp.2d 585, 601-08 (E.D. Va. 2004)(Policy of Virginia post-secondary institutions in denying admission to illegal aliens was not preempted by federal immigration authority).

Indeed, it is Plaintiffs who are attempting to have the State regulate immigration by seeking to have the State issue an identification card that makes illegal aliens and restricted or temporary aliens appear to have a status indistinguishable from citizens and lawful permanent residents -- a status that they have not sought, or are unable to obtain, from the federal government. Plaintiffs have not cited any authority compelling a state to provide such an endorsement.

Furthermore, as in DeCanas, there is no indication that the federal government intends to completely occupy the field of drivers' license issuance for immigrants as regulation of the issuance of drivers' licenses has traditionally been left to state governments. Also, as discussed above, the drivers' license legislation furthers the legitimate state goals of regulating driver safety while minimizing the risk to homeland security.

5. Miscellaneous Claims

Plaintiffs allege that the drivers' license program in Tennessee, as a recipient of federal funds, violates Title VI, 42 U.S.C. § 2000d, by preventing illegal aliens and those aliens who are not lawful permanent residents from obtaining drivers' licenses. Plaintiffs also allege that Defendants discriminate against them by failing to provide interpreters "in the implementation of services related to driver licenses and other services of the Department of Safety, through T.C.A. 55-50-321(c)(1)(A)." (First Amended Complaint, at ¶ 80).

Title VI prohibits only those classifications that would violate the Equal Protection Clause. See Alexander v. Sandoval, 532 U.S. 275, 121 S.Ct. 1511, 1516, 149 L.Ed.2d 517 (2001)(citing Regents of Univ. of Cal. v. Bakke, 438 U.S. 265, 287, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978)(opinion of Powell, J.)); Peters v. Jenney, 327 F.3d 307, 315 (4th Cir. 2003). For the reasons set forth above, the Court concludes that Plaintiffs are unlikely to succeed on their claim that the classifications created by the drivers' license legislation violate the Equal Protection Clause.

Plaintiffs also claim that Defendants violate Title VI by failing to provide interpreter services. Tennessee Code Annotated Section 55-50-321(c)(1(A) provides that applicants who desire interpreter services are responsible for procuring such services.

In a Title VI challenge to the State of Alabama's failure to offer its drivers' license examination in languages other than English, the Supreme Court made clear that such claims may not be brought under a disparate impact theory, but must be based on intentional discrimination. Alexander v. Sandoval, 121 S.Ct. at 1516. To prove intentional discrimination based on a facially neutral policy, the Plaintiffs must show that the policy "was promulgated or

reaffirmed *because of*, not merely in spite of, its adverse impact on persons in the plaintiff's class." Horner v. Kentucky High School Athletic Association, 43 F.3d 265, 276 (6th Cir. 1994).

The Sixth Circuit held that intentional discrimination had not been shown by plaintiffs challenging the failure of a city government to give its civil service examination in Spanish. Frontera v. Sindell, 522 F.2d 1215, 1219 (6th Cir. 1975)("There is not an iota of evidence tending to prove that the commission in conducting the examination in English, discriminated against the plaintiff on account of his nationality or against any other nationality.") Rather, the Frontera Court explained, the failure to translate the examination into various other languages was a result of the limited resources of the testing agency:

> If Civil Service examinations are required to be conducted in Spanish to satisfy a few persons who might want to take them, what about the numerous other nationality groups which inhabit metropolitan Cleveland? These other nationality groups would have just as much right as Frontera to have their examinations conducted in their own languages. The city could not conduct examinations in Spanish and deny other nationalities the same privilege. Denial to any would be invidious discrimination.
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> In order to accommodate all nationality groups, the city might be compelled to establish a department of languages with a staff of linguists to translate the tests and supervise them. This would, of course, be at the expense of the city which has severe financial problems at the present time and would ultimately be saddled upon the harried taxpayers of Cleveland.

522 F.2d at 1219.

In light of these authorities, and the current record, Plaintiffs have not shown a likelihood of success on the merits of this claim.

Plaintiffs also seek a declaratory judgment that certain sections of the Tennessee Code[7] are unconstitutionally vague in that they fail to provide guidelines as to what constitutes "satisfactory evidence of identification." Four of those provisions generally permit law enforcement or judicial officers to issue a citation or a criminal summons for misdemeanor offenses in lieu of arrest under certain conditions. Tenn. Code Ann. §§ 40-7-118; 40-7-120; 40-6-205; 55-10-207. One of those conditions is that the person provide "satisfactory evidence of identification." Tenn. Code Ann. §§ 40-7-118(c)(3); 40-7-120(k)(7); 40-6-205(b)(7). The fifth statute cited by Plaintiffs is one requiring innkeepers to keep a guest register for one year and must require every guest to produce "a valid driver license, or other identification satisfactory to the innkeeper." Tenn. Code Ann. § 68-14-604.

A statute is unconstitutionally vague if it is not "subject to reasonable interpretation by ordinary men." United States v. Skinner, 25 F.3d 1314, 1318 (1994). The Supreme Court has explained that "because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." Grayned v. City of Rockford, 408 U.S. 104, 92 S.Ct. 2294, 2298, 33 L.Ed.2d 222 (1972). To avoid arbitrary and discriminatory enforcement, "laws must provide explicit standards for those who apply them." Id.

In reviewing a statute challenged on vagueness grounds, the Sixth Circuit has explained: "where a statute's language is 'clear and unambiguous, we can proceed no further in our examination except in very limited situations.'" Skinner, 25 F.3d at 1318 (quoting Barker v.

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[7] Specifically, the Complaint challenges Tennessee Code Annotated Sections 40-7-118, 40-7-120, 40-6-205, 55-10-207, and 68-14-604.

Chesapeake & Ohio R.R., 959 F.2d 1361, 1366 (6th Cir. 1992)). On the other hand, the Supreme Court has noted that "[c]ondemned to the use of words, we can never expect mathematical certainty from our language." Grayned, 92 S.Ct. at 2300. Since "[t]he classification of a federal statute as void for vagueness is a significant matter ... [,] '[e]very reasonable construction must be resorted to, in order to save a statute from unconstitutionality.' " Columbia Natural Resources, Inc. v. Tatum, 58 F.3d 1101, 1105 (6th Cir.1995)(quoting Chapman v. United States, 500 U.S. 453, 464, 111 S.Ct. 1919, 1926-27, 114 L.Ed.2d 524 (1991)).

Although the "cite and release" statutes do not list what is to be accepted as "satisfactory evidence of identification," the Tennessee Supreme Court has recently construed this phrase in considering Tennessee Code Annotated Section 40-7-118. See Kildea v. Electro-Wire Products, Inc., 144 F.3d 400, 407 (6th Cir. 1998) (In analyzing a statute for vagueness, the courts may consider interpretations of the statute set forth in regulations or court decisions). In State v. Walker, 12 S.W.3d 460, 462 (Tenn. 2000), the court held that "an objective standard of reasonableness should be used to determine whether evidence of identification offered to an officer by a misdemeanant is satisfactory evidence of identification within the meaning of the statute." Applying that standard, the court held that an officer's refusal to accept the identifying information provided by the defendant – name, date of birth, and drivers' license number, though not the license itself – was sufficient, and that the officer's subsequent custodial arrest and search incident to it violated the Fourth Amendment. Id., at 462-63.

From this analysis, it is clear that the term "satisfactory evidence of identification" is subject to reasonable construction and gives adequate notice to law enforcement officers and others called on to apply its terms. The phrase is governed by an objective standard and, thus, is

no less ascertainable than any other legal doctrine that relies on objective reasonableness. Hence, Plaintiffs are unlikely to succeed on the merits in showing that the statute is void for vagueness and unconstitutional. See Kildea v. Electro-Wire Products, Inc., 144 F.3d at 407.[8]

Finally, Plaintiffs have raised various other collateral issues in their Complaint.[9] Plaintiffs have not demonstrated sufficient likelihood of success on the merits of these collateral issues to warrant injunctive relief.

C. Other Injunction Factors

The Court also finds that Plaintiffs have not carried their burden of demonstrating that they will suffer imminent irreparable harm if an injunction does not issue. Violation of a constitutional right can constitute irreparable harm, but the Court has found that the Plaintiffs are unlikely to succeed on the merits of their constitutional claims. Plaintiffs' generalized fears about travel, identification and insurance do not rise to the level of specific, imminent irreparable harms sufficient to justify injunctive relief.

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[8] The cite and release statutes are not somehow rendered vague by Plaintiffs' allegation that law enforcement agencies are not in agreement as to whether they will accept a drivers' certificate as satisfactory evidence of identification. Given that the certificates clearly state that they are not valid for identification, it would not be surprising that a law enforcement officer would reject the certificate as satisfactory evidence of identification. On the other hand, it is difficult to understand why Plaintiffs would complain if other law enforcement officers decided to accept the certificates as satisfactory.

[9] One of Plaintiffs' other claims is a challenge to Public Chapter 351, which prohibits the Department of Safety from accepting matricula consular cards as proof of identification for drivers' license application and issuance purposes. See Tenn. Code Ann. § 55-50-321(g). Plaintiffs have not shown a likelihood of success on the merits, or a balance in their favor on the remaining injunction factors, to warrant the issuance of an injunction on this claim.

The Court further finds that the public interest would not be advanced by an injunction and that an injunction would result in harm to innocent third-parties. For instance, individuals with driving certificates from the State could no longer lawfully drive to work, the grocery, religious services or elsewhere. The State could no longer issue driving certificates, which likely would result in various unqualified and uninsured individuals driving anyway and imperiling the public. Finally, the lack of a comprehensive scheme to regulate drivers could impact law enforcement during traffic stops and in numerous other adverse ways.

## IV. Conclusion

For the reasons described above, the Motion For Preliminary Injunction (Docket No. 4) is DENIED.

The Courts of Appeals have jurisdiction of appeals from interlocutory orders of the District Courts "granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions ..." 28 U.S.C. § 1292(a)(1). The Court, alternatively, also certifies pursuant to 28 U.S.C. § 1292(b), that the Order denying injunctive relief involves a controlling question of constitutional law as to which there is substantial ground for differences of opinion and that an immediate appeal from the Order will materially advance the ultimate termination of this litigation.

The Motion To Dismiss is taken under advisement and will be addressed by separate order at a later time.

It is so ORDERED.

TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE